

ORDINANCE NO. 123, SERIES 2005

AN ORDINANCE PROHIBITING SMOKING IN BUILDINGS OPEN TO THE PUBLIC (AMENDED BY SUBSTITUTION).

**Sponsored by: George Melton, District 15
Jim King, District 10; Rick Blackwell, District 12; Ron Weston, District 13**

WHEREAS, KRS Section 67C.103 authorizes the Legislative Council of the Louisville/Jefferson County Metro Government ("Metro Council") to enact ordinances to promote and protect the public health and safety of its citizens; and

WHEREAS, the Metro Council has examined the secondary effects of smoking in enclosed spaces; and

WHEREAS, the Metro Council ~~has discovered~~ believes, based on the studies examined and expert testimony, that smoking in enclosed spaces is a danger to those persons exposed to such smoke and may be a material annoyance, inconvenience, and discomfort to those who do not smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE METRO COUNCIL, AS

FOLLOWS:

Section I. NEW PROVISIONS.

New sections of the Louisville/Jefferson County Metro Government Code of Ordinances are hereby enacted to read as follows:

Section A. DECLARATION OF POLICY. In order to serve the public health, safety and general welfare, it is the declared purpose of this Ordinance to prohibit smoking in all buildings open to the public.

Section B. DEFINITIONS.

For the purpose of Sections B through I of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) **ATTACHED BAR.** An area within a restaurant, which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises of such restaurant.

(2) **BUILDING.** Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has eighty percent (80%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary. If a person leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest as well.

(3) **DWELLING.** Any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a hotel or motel room or suite or a hospital, hospice or nursing home room, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.

(4) **ENCLOSED SMOKING AREA.** An area within a building where no more than fifty percent (50%) of the square footage of the floor space of the building is designated for smoking

and such area that is designated for smoking is physically separated and independently ventilated from the remaining non-smoking areas of the building.

(5) **FREESTANDING BAR.** An establishment within a building that is not a restaurant nor an attached bar, as those terms are defined herein, has a current distilled spirits and wine retail drink license, restaurant drink license, restaurant wine license or malt beverage license issued by the Commonwealth of Kentucky and Metro Government, ~~only permits patrons on the premises of such establishment who are age 21 or older,~~ and serves alcoholic beverages for consumption by guests/patrons.

(6) **INDEPENDENTLY VENTILATED.** The ventilation system of the enclosed smoking area in a building and the ventilation system of the non-smoking area in the remaining portions of the building do not have a connection which allows the mixing of air into the smoking and non-smoking areas of the building. A letter from a licensed, professional engineer shall certify that the ventilation systems do not, in fact, have a connection that allows the mixing of air from the enclosed smoking area and the non-smoking area of a building.

(7) **PHYSICALLY SEPARATED.** Physical barriers encircling an enclosed smoking area of a building such as walls and doors extending from floor to ceiling that prohibit smoke from

entering a non-smoking area within such building. There shall be no more than 64 square feet of normally open doorways per every 5,000 square feet of area designated for smoking within an enclosed smoking area. All common areas, such as lobbies, restrooms, hallways leading to common areas, and the like, shall be located in the non-smoking area of a building, which has an enclosed smoking area.

~~(6)~~(8) **PRIVATE ORGANIZATION.** An establishment which maintains selective members, is operated by the membership, does not provide food, drink or lodging for pay to anyone who is not a member or a member's guest and is not profit oriented.

~~(7)~~(9) **RETAIL TOBACCO STORE.** A retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than fifty (50) percent of the total annual gross sales.

~~(8)~~(10) **RESTAURANT.** An establishment within a building where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, that receives at least seventy five percent (75%) of its gross receipts

from the sale of food consumed indoors on the premises, that ~~allows patrons on the premises of any age~~, and that has a current distilled spirits and wine retail drink license, malt beverage license, restaurant drink license or restaurant wine license issued by the Commonwealth of Kentucky and Metro Government, or any other eating establishment, not having any of the alcoholic beverage licenses, as mentioned directly above, including, but not limited to, coffee shops, cafeterias, indoor sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. For purposes of this Ordinance, the term "restaurant" includes the term, attached bar, as defined herein.

~~(9)~~(11) **SMOKE OR SMOKING.** The act of inhaling or exhaling the smoke from any lighted cigarette, cigar, or pipe, or other combustible tobacco product.

~~(10)~~(12) **TOBACCO WAREHOUSE.** Any warehouse building offering tobacco for purchase at auction and meeting the definition established in KRS 248.010(4).

SECTION C. PROHIBITION OF SMOKING IN PUBLIC BUILDINGS AND EXCEPTIONS.

- (1) No person shall smoke within any ~~portion of a~~ building open ~~to the public~~ **except** in one of the following locations:

- (a) In any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent. This exception does not extend to private residences when they are used as a licensed childcare, adult day care, or health care facility.
- (b) In a room or hall being used by a person or group for a private social function that is not open to the public, in any room used for psychological treatment of nicotine addiction by a licensed health care professional, or in a physically separate and independently ventilated room in a hospital, hospice, or nursing home open to all residents as a smoking room and for no other purpose.
- (c) In a retail tobacco store.
- (d) A performer as part of a theatrical production so long as adequate notice is provided patrons both before the performance and by specific signage at the theater.

- (e) Indoor smoking areas provided in governmental office buildings or workplaces pursuant to KRS 61.165.
- (f) Facilities operated by private organizations.
- (g) In a tobacco warehouse.
- (h) Any facility or property owned, leased or otherwise operated by a person or entity licensed and regulated by the Kentucky Horse Racing Authority under KRS Chapter 230, which has been approved pursuant to KRS 230.300 as part of the licensed person's or entity's place, track or enclosure for conducting horse race meetings, or which has been approved pursuant to KRS 230.380 to simulcast horse racing and conduct pari-mutuel wagering.
- (i) Freestanding Bars.
- (j) Enclosed Smoking Areas.

(2) Nothing in this Ordinance shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

(3) Nothing in this Ordinance shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or by order of the Fire Marshal.

SECTION D. POSTING OF SIGNS; REMOVAL OF ASHTRAYS.

- (1) No owner, lessee, principal manager, or person in control of a building or an establishment in any building ~~open to the public~~ shall fail to post signs, with letters of not less than one inch high or symbols no less than three inches high, using the words "No Smoking" or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette surrounded by a red circle with a red bar across it conspicuously either on all public entrances or in a position clearly visible on entry into building or establishment. However, if a building or an establishment ~~open to the public~~ provides an enclosed smoking area, then such building or establishment shall have a sign that clearly and conspicuously recites "NO SMOKING SHALL BE PERMITTED INSIDE THIS FACILITY EXCEPT IN THE ENCLOSED SMOKING AREA." The enclosed smoking area of the building or establishment where smoking is permitted as provided for by this Ordinance shall also have a sign on any door leading out of such enclosed smoking area that clearly and conspicuously recites "NO SMOKING SHALL BE PERMITTED BEYOND THIS POINT IN THE REMAINING INTERIOR PORTIONS OF THIS FACILITY."
- (2) The owner, operator, manager, or designee or employee of every establishment in a building ~~open to the public~~ shall inform

persons violating this Ordinance of the applicable provisions thereof and require compliance.

- (3) All ashtrays shall be removed from any area where smoking is prohibited by Sections B through I of this Ordinance and shall not be permitted by the owner, operator, manager or other person having control of the establishment. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

- (4) The requirements of this Section D do not apply to any exempt dwelling.

SECTION E. DUTIES OF OWNERS OF BUILDINGS AND/OR ESTABLISHMENTS.

- (1) No owner, lessee, principal manager, or person in control of a building or establishment in a building shall fail to:

- (a) Ask smokers to refrain from smoking in any no-smoking area;
- (b) Use any other legal means, which may be appropriate to further the intent of this Ordinance.

- (2) No owner, principal manager, proprietor, or any other person in control of a business shall fail to ensure compliance by subordinates, employees, and agents with this Ordinance.

SECTION F. ENFORCEMENT.

Enforcement of Sections B through I of this Ordinance shall be by citation issued by the Louisville Metro Health Department. Notice of the provisions of this Ordinance shall be given by Metro Government to all applicants for a business or other license.

SECTION G. VIOLATIONS AND PENALTIES.

(1) Except as otherwise provided in Subsection (2) hereof, any violation of Sections A through I of this Ordinance, including a person who smokes in an area where smoking is prohibited, shall be classified as a civil offense and shall be enforced through the Code Enforcement Board ("Board") as provided in LMCO 32.275 – 32.290, or as it may be amended. The civil penalties for violations of Sections A through I of this Ordinance are as follows:

(a) A minimum penalty of \$50 and a maximum penalty of \$100 for the first offense within a one-year period;

(b) A minimum penalty of \$150 and a maximum penalty fine of \$250 for the second offense within a one-year period; and

(c) A minimum penalty fine of \$350 and a maximum penalty of \$500 for the third and each subsequent offense within a one-year period.

(d) Any person cited for violation of this Ordinance as provided in Section (1) hereof may pay the minimum civil penalty within seven (7) days from the date of issuance or request a hearing regarding such penalty to the Board

in accordance with LMCO Sections 32.275 et. seq. If the person fails to respond to the citation within seven (7) days as referenced above, the person shall be deemed to have waived the right to a hearing. In this event, the Board shall enter a final order determining that the violation was committed and impose the civil penalty as set forth in the citation.

(2) Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for criminal trespass if they do not leave when asked.

(3) Each calendar day during which a violation of Section B through of I of this Ordinance occurs shall constitute a separate and distinct offense.

SECTION H. REASONABLE DISTANCE.

Smoking is prohibited within a reasonable distance from the outside entrance to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means.

SECTION I. NON-RETALIATION.

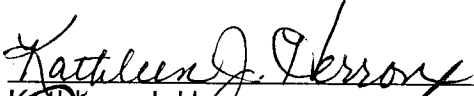
No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by Sections B through I of this Ordinance.

SECTION J. SEVERABILITY.

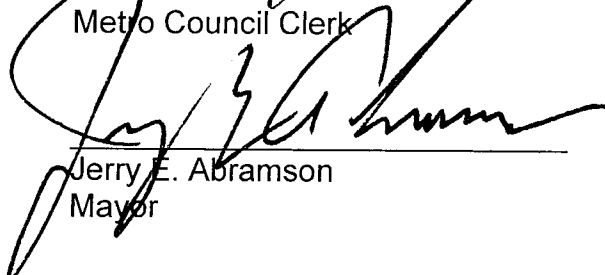
If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION II. EFFECTIVE DATE.

This Ordinance shall take effect ninety (90) days after its passage and approval.


Kathleen J. Herron
Metro Council Clerk


Dr. Barbara E. Shanklin
President of the Metro Council


Jerry E. Abramson
Mayor

Approved: _____

Date

8/17/05

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

Draft 12 epm 081105 9:40 p.m. (Final)

